

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

*In re Dealer Management Systems Antitrust
Litigation, MDL 2817*

No. 1:18-CV-864

*This document relates to:
Authenticom, Inc. v. CDK Global, LLC et al.,
Case No. 1:18-cv-00868 (N.D. Ill.)*

Hon. Robert M. Dow, Jr.

Magistrate Judge Jeffrey T. Gilbert

**COUNTERCLAIMANT THE REYNOLDS AND REYNOLDS COMPANY’S MOTION
FOR PARTIAL SUMMARY JUDGMENT**

Defendant The Reynolds and Reynolds Company (“Reynolds”), by its undersigned counsel and pursuant to Federal Rule of Civil Procedure 56, hereby moves for partial summary judgment in favor of liability as to its Third Counterclaim (Digital Millennium Copyright Act) and Fourth Counterclaim (Wisconsin Computer Crime Act) against Authenticom, Inc (“Authenticom”).

Reynolds submits that based on undisputed facts, Authenticom has violated both statutes as a matter of law. There are no fact disputes regarding Authenticom’s actions at issue: Authenticom has engaged in a persistent campaign to circumvent Reynolds’s access controls protecting Reynolds’s proprietary Dealer Management System from unauthorized third-party access. Authenticom has also knowingly and intentionally accessed Reynolds’s computer programs and disseminated Reynolds’s system credentials without Reynolds’s authorization. Authenticom’s primary defense of these activities is a legal one—in particular, it claims it is immunized by dealers’ purported authorizations. But this defense (and all others) is meritless, as this Court has already recognized. *See* Order at 17-18 [Dkt. 506]; Order at 19-20 [Dkt. 749]. Authenticom has therefore violated both the Digital Millennium Copyright Act and the Wisconsin Computer Crime Act, as a matter of law.

Reynolds is filing a Motion for Leave to File *Instantly* a Brief in Excess of Fifteen Pages, to which is attach a 26-page Proposed Memorandum in Support (“Memorandum”) of this motion. Pursuant to Local Rule 56.1, Reynolds is also filing a Statement of Undisputed Material Facts (“Statement of Facts”) in support of this Motion. In addition to the Memorandum and Statement of Facts, this motion is accompanied by the following materials in support:

- Exhibits 1-108;
- Declaration of Brice Wilkinson;
- Declaration of Jonathan Emmanuel.

The Memorandum, Statement of Facts, and supporting exhibits are being filed under seal and Reynolds will serve all parties to this MDL with unredacted copies by email. Should the Court grant Reynolds’s Motion for Leave, Reynolds will promptly file public redacted versions of the Memorandum and Statement of Facts with the Court.

For the reasons set forth in the Memorandum and other supporting materials, Reynolds moves that the Court grant a partial summary judgment holding that Authenticom has violated the Digital Millennium Copyright Act and the Wisconsin Computer Crime Act by and through its actions on the Reynolds Dealer Management System. The magnitude of Authenticom’s wrongful acts, and the remedies that flow therefrom, are beyond the scope of this motion and are left for further proceedings, including but not limited to trial by jury. Reynolds further requests such other relief as may be appropriate.

[Signature block on following page]

Dated: October 15, 2019

Respectfully submitted,

/s/ Aundrea K. Gulley

Aundrea K. Gulley

Brian T. Ross

Brice A. Wilkinson

Ross A. MacDonald

GIBBS & BRUNS LLP

1100 Louisiana Street

Suite 5300

Houston, TX 77002

(713) 751-5258

agulley@gibbsbruns.com

bross@gibbsbruns.com

bwilkinson@gibbsbruns.com

rmacdonald@gibbsbruns.com

Michael P.A. Cohen

Leo D. Caseria

SHEPPARD MULLIN RICHTER & HAMPTON,
LLP

2099 Pennsylvania Avenue NW, Suite 100

Washington, DC 20006

(202) 747-1900

mcohen@sheppardmullin.com

lcaseria@sheppardmullin.com

Counsel for Defendant

The Reynolds and Reynolds Company

CERTIFICATE OF SERVICE

I, Brice A. Wilkinson, an attorney, hereby certify that on October 15, 2019, I caused a true and correct copy of the foregoing **COUNTERCLAIMANT THE REYNOLDS AND REYNOLDS COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT** to be filed and served electronically via the court's CM/ECF system. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

/s/ Brice A. Wilkinson

Brice A. Wilkinson
GIBBS & BRUNS LLP
1100 Louisiana Street
Suite 5300
Houston, TX 77002
(713) 751-5218
bwilkinson@gibbsbruns.com